

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2141.04
COMPLAINT INVESTIGATOR:	Sandie Scudder
DATE OF COMPLAINT:	May 28, 2004
DATE OF REPORT:	July 23, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	December 21, 2004

COMPLAINT ISSUES:

Whether the Monroe County Community School Corporation violated:

511 IAC 7-27-6(a)(2) by failing to include measurable goals in the student's individualized education program (IEP).

511 IAC 7-26-12(c) by failing to provide professionals and paraprofessionals, working with the student, with specialized inservice training in the area of other health impairments.

511 IAC 7-26-2(c) by failing to provide professionals and paraprofessionals, working with the student, with specialized inservice training in the area of autism spectrum disorder.

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically:

- a. failing to provide the parent with progress reports at the intervals and in the manner indicated in the student's IEP;
- b. failing to implement the student's Behavioral Intervention Plan (BIP) as written;
- c. failing to provide assistance from a resource teacher;
- d. failing to work on the identified goals and objectives;
- e. failing to ensure the occupational therapist developed a plan of calming activities and provided the plan to the parents;
- f. failing to place the student in the placement identified in the IEP

511 IAC 7-27-4(c) and 511 IAC 7-27-6(a)(8) by failing to ensure the case conference committee (CCC) considered the student's need for extended school year services.

511 IAC 7-27-4(c)(6) by failing to ensure the CCC considered the student's need for assistive technology services.

511 IAC 7-17-8 by failing to conduct a functional behavioral assessment (FBA) and utilize the results of the FBA when developing a BIP for the student.

511 IAC 7-22-1(d) by failing to provide the parent with a Notice of Procedural Safeguards when notifying the parent of the CCC meeting scheduled for April 2 and April 15, 2004.

511 IAC 7-25-7 by failing to conduct additional evaluations and convene a CCC meeting within 60 days of the parent's written consent.

511 IAC 7-20-3 by failing to implement a comprehensive plan of personnel development to provide training to school personnel in the areas of identified needs.

511 IAC 7-29-1(d) and 511 IAC 7-29-2(a) and (b) by suspending a student with a disability for more than ten consecutive instructional days and failing to comply with appropriate change of placement procedures described in 511 IAC 7-27-5.

511 IAC 7-29-5 by failing to conduct an FBA within 10 business days of first suspending a student for more than ten instructional days.

511 IAC 7-29-6 by failing to conduct a manifestation determination when suspending a student with a disability for more than ten consecutive instructional days within ten instructional days of unilaterally removing the student from the student's current educational placement.

511 IAC 7-29-1(f) by failing to provide a student with a disability with educational services beginning on the student's eleventh cumulative day of suspension.

511 IAC 7-21-2(a) by failing to ensure that the teacher working with the student is appropriately licensed.

511 IAC 7-27-9 by failing to ensure the availability of the continuum of services and placements and failing to ensure the CCC considered the continuum when determining appropriate services and placement for the student.

511 IAC 7-21-2(b) and (c) by failing to ensure that paraprofessionals working with the student are appropriately trained and that the services provided by the paraprofessional are under the direction and supervision of a licensed teacher.

511 IAC 7-25-5(a) and (c) by failing to provide the parent with information about where an independent educational evaluation (IEE) may be obtained and the school's criteria applicable to an IEE and failing, within 10 business days of the parent's request for an IEE, to notify the parent in writing that the IEE would be at public expense or to initiate a due process hearing.

511 IAC 7-27-5 by failing to include in the CCC report factors relevant to the student's proposed placement or denial of placement.

511 IAC 7-27-9(a)(11) failing to ensure the student is in a classroom and building with his chronological age peers when the CCC has not determined an alternative is appropriate nor documented the need for an alternative setting in the student's IEP.

511 IAC 7-27-9(a)(12) by removing the student from being educated in an age-appropriate general education classroom because of the personnel's lack of training and the school's inability to provide appropriate modifications in that setting.

The following alleged violations were added during the course of the complaint investigation:

511 IAC 7-27-6(a) by failing to include in the student's IEP the length and frequency of related services.

511 IAC 7-27-7(a) by failing to implement the Student's IEP, specifically, failing to provide OT and social work services as described in the IEP, beginning with the initiation of in-school suspension and continuing through the end of the school year.

Due to number of alleged violations, the investigator required additional time to complete the investigation. As a result of the need for additional time, the Associate Superintendent granted an extension of time within which to complete the complaint investigation report to and including July 16, 2004. On July 14, 2004, the Associate Superintendent granted a second extension of time, to and including July 23, 2004.

FINDINGS OF FACT:

1. The student (Student) is eight years old, in the second grade, and was determined eligible for special education and related services as a student with autism spectrum disorder on May 13, 2004. Previously, the Student was determined eligible as a student with an other health impairment.
2. The Student's general education classroom teacher and the special education teacher during the 2003-2004 school year both attended inservice training on other health impairments and autism spectrum disorder in August 2001. Not all of the other staff who worked with the Student during the 2003-2004 school year (sometimes referred to by the School as paraprofessionals and other times as substitute teachers) received inservice training in these areas. The School provided no documentation to indicate that the occupational therapist and the social worker who worked with the Student received inservice training in either of these areas.
3. There were several IEPs proposed for the Student for the 2003-2004 school year: April 28, 2003; September 10, 2003; February 19, 2004; and April 2/15 2004. However, the only IEP to which the Complainant consented is dated September 10, 2003, although she did not provide consent until December 4, 2003. With regard to the IEP developed on April 2 and 15, 2004, the Complainant sent an email to the School on April 18 stating "[t]his email is to give my permission for [the Student] to be in [Teacher's] third grade class, effective Monday, April 19, 2004...I am not able to sign the IEP at this time as I am not comfortable with the goals, the Functional Behavioral Assessment, or the Behavioral Intervention plan..."
4. The September 10th IEP contains a single goal: "[The Student] will develop strategies to improve his behavior in the school setting." The short-term objectives identify that the Student will: (1) develop self-monitoring skills through verbal prompting from an adult to determine when a time out is needed three out of four times; (2) initiate the use of an art journal to reduce tension and/or aggression three out of five times; (3) select an option, when given a choice, within a reasonable amount of time and implement the choice three out of five times; and (4) demonstrate social appropriateness during times of transition by not being aggressive toward peers 75% of the time.
5. At CCC meetings convened in April 2004, the CCC proposed a slightly different goal: "[The Student] will use three or more strategies daily to maintain calm behavior in the school environment." The short-term objectives are that the Student will: (1) complete the tasks on the daily schedule without complaint four out of five times; (2) use self-calming techniques when in high demand situations four out of five times; (3) comply with teacher requests without verbal complaint four out of five times; and (4) subsequent to viewing a social story on greeting, will initiate and reply to greetings four out of five times.
6. The September 10th IEP indicates that progress will be reported on the "goals form." The IEP does not indicate that progress reports will be provided at any time other than at the time parents of non-disabled students are notified of students' progress. School report cards were issued on October 24, 2003, and January 16, April 2, and June 9, 2004. The Complainant acknowledges receiving progress reports dated January 16 and June 9, 2004. The School provided no documentation that it provided the parent with progress reports in October and April.

7. The September 10th IEP includes a behavioral intervention plan (BIP) to be initiated September 15, 2003. However, the BIP could not be implemented until the Complainant provided consent in December 2003. The BIP was designed to improve the Student's ability to "follow school rules" and included rewards for meeting the target behavior on a daily basis and consequences for failing to meet the target behavior. If the Student did not receive the reward on any given day, the teacher was to contact the Complainant and explain why. In addition, the Student would receive three verbal warnings for inappropriate behavior and, if not successful, the Principal would be called. The BIP does not include the consequence of sending the Student home from school for his behavior. The Complainant's assertion that the School failed to implement the BIP is based on the School's suspension of the Student for his behavior at various times. The School provided no documentation of the rewards, contacts with the Complainant when a reward was not earned, or of the other identified consequences that had been implemented. There is no documentation to demonstrate that the BIP included with the September 10th IEP is linked to a functional behavioral assessment (FBA). The previous FBA was initiated in October 2002 and resulted in a BIP dated December 13, 2002. The goal of the December 2002 BIP was for the Student to comply with the teacher's request. This particular BIP was attached to the IEP proposed in April 2003. However, it is not the same BIP that is included with the September 2003 IEP.
8. The September 10th IEP indicates that the Student will participate in "a regular education classroom with special education support and/or modifications daily." A separate page in the IEP entitled *Modifications/Accommodations/Supports to Meet Educational Needs* identifies a variety of things to be provided to or for the Student in the general education classroom. The IEP does not indicate that the Student will receive assistance from a resource teacher, nor does it limit the Student's participation with non-disabled students. The Student was placed and participated in the general education second grade classroom.
9. The September 10th IEP includes occupational therapy as a related service to be provided 20 minutes per week, both directly and through consultation, although the IEP does not specify how much of the 20 minutes is to be allocated to direct therapy and how much to consultation. The IEP does not describe any requirement that the occupational therapist develop a plan of calming activities for the Student or that such plan be provided to the parents. Although the April 2004 proposed IEP includes a short-term objective that the Student will use self-calming techniques, the occupational therapist is not identified as the person responsible for implementing the objective. In addition to occupational therapy, the September 10th IEP identifies social work as a related service, but neither IEP specifies the length or frequency of this service. The IEP proposed in April 2004 identifies occupational therapy and social work as related services, but does not indicate length or frequency of either of the services.
10. The IEP form utilized by the School includes the question "[i]s extended school year recommended" and has a place for "yes" or "no" to be checked by the CCC. In the proposed IEP dated April 28, 2003, the CCC has checked "no" in response to this question. The same is checked in the September 10th IEP, agreed to by the Complainant. The proposed IEPs in February and April 2004 also indicate that extended school year services are not recommended, and the April 2004 IEP includes the statement: "Mom has commented that summer is [the Student's] best time. He comes back to school better, starts the year better."
11. The Complainant contends that the CCC did not discuss the Student's need for an assistive technology assessment. The IEP form includes the questions "does the student require assistive technology devices or services" and "should the student be considered for an assistive technology evaluation" to which the CCC can indicate "yes" or "no." In the proposed IEP dated April 28, 2003, the CCC checked

“no” in response to these questions. The same responses are given in the agreed-upon IEP dated September 10, 2003, and in the IEPs proposed in February and April 2004.

12. During the 2003-2004 school year, the Student was sent home from school for part of the instructional day on December 17, 2003, and February 2, 27, and 28, and April 9, 2004 due to the Student's behavior. No notice of suspension was provided to the Complainant for the Student's removal on these dates. Pursuant to formal notices of suspension, the Student was also suspended from school for four additional days on March 1, 2, and 24, and April 13, 2004, for behaviors such as kicking and verbally threatening others.
13. On March 25, 2004, the Student was assigned in-school suspension for seven days beginning March 25, 2004, for kicking and threatening another student. A letter from the Principal to the Complainant, dated March 26, 2004, states that “the current plan for [the Student], receiving his curriculum out of the classroom with an aide, is considered an In-School Suspension...that will remain in effect until the case conference committee convenes on Friday, April 2, 2004. “
14. The CCC convened on April 2nd and, in an addendum to the IEP, proposed that until a behavior plan and a temporary schedule are developed “[the Student] will remain in In-School Suspension and [the Student] will receive his instruction from a substitute teacher.” The Complainant did not consent to the continuation of the in-school suspension. The Student remained in in-school suspension from March 25th through April 8th a total of eleven consecutive instructional days. After being sent home from school on April 9th, the Student remained in in-school suspension on April 12, 14, 15, and 16, 2004. The CCC did not determine if the student's behavior, resulting in the suspension, was a manifestation of the Student's disability.
15. While being assigned to in-school suspension, the Student's instruction was provided by individuals whom the School originally identified as paraprofessionals but subsequently represented that each of the individuals was a School-certified substitute teacher. Only one of these individuals held a license to teach second grade students, and this individual provided services for only a few days during the first five days of in-school suspension. None of the other individuals was licensed to teach second grade or special education.
16. Beginning on April 12, 2004, the School terminated the practice of alternating individuals to work with the Student, and assigned a single individual who worked individually with the Student through the end of the school year. The School originally reported that this individual was employed by the School as a paraprofessional, but subsequently advised that the individual was employed as a substitute teacher for the Student. The School certified the individual as a substitute teacher based on her license to teach junior and senior high school math and chemistry.
17. From March 25th through April 16th, as well as from April 19th to the end of the school year, “the general education teacher designed the instruction” and “both the general education and special education teachers supervised [the paraprofessional/substitute teacher].” However, there was no direct or “line of sight” supervision of the individuals working with the Student as the Student's classroom was separate from that of the general education classroom and the general and special education teachers. The Student's IEP indicates that the general and special education teachers are responsible for implementing the goal and objectives of the IEP.
18. The Complainant asserts that, during the period of in-school suspension, the Student was not provided assistance in working on the goal and objectives contained in his IEP. The logs maintained by the individuals working with the Student, beginning on March 29th, do not provide any documentation of

working with the Student on the IEP-identified short-term objectives leading to attainment of the annual goal.

19. Although the Student's September 10th IEP did not limit the Student's participation with non-disabled students, between March 25th and April 16th, the Student was not permitted to participate with non-disabled students to the extent allowed by his IEP. Further, there is no documentation to demonstrate that the Student was provided with occupational therapy and social work services in accordance with his September 10th IEP.
20. The CCC reconvened on April 15, 2004, to conclude the CCC begun on April 2nd. A second addendum to the IEP, dated April 15th, includes the CCC's recommendation for the Student to be placed in a "separate individual classroom...with a substitute teacher" while beginning to integrate the Student into another general education classroom. According to the addendum, "in addition to the third grade teacher, another adult (substitute teacher) was determined necessary [by the CCC] because of [the Student's] seemingly unpredictable and possibly volatile behavior." The addendum stated that the "change of placement" was to be immediate upon receipt of written parental permission.
21. Between April 19th and the end of the school year, the Student remained in a separate individual classroom with the one-to-one assistance of a substitute teacher and participated intermittently for varying lengths of time in a general education third-grade classroom. The substitute teacher's log for this time period provides limited information about the nature of the Student's participation, but does not indicate that the Student spent any significant instructional time in the general education classroom. In addition, the log indicates that only some of the related services were provided during this time. Actual occupational therapy and social work logs were not provided.
22. The Complainant asserts that the CCC, convened on April 2 and reconvened on April 15, 2004, did not consider the full continuum of placement options. The IEP form includes a section entitled *Special Education Services/Least Restrictive Environment*. In this section, the CCC identifies "services considered and rejected (indicate reasons)" and "services recommended (indicate reasons; location, frequency and length)". The April 2nd/15th IEP form identifies a single "considered and rejected" placement and states "[p]lacement in a general education class with no special education services would not provide [the Student] with the support needed to enable [the Student] to succeed." However, the Addendum dated April 15, 2004, indicates that the CCC considered a range of options, including placement in the general education classroom, special education resource room, separate classroom, and homebound services. Of these options, the CCC recommended placement in a separate classroom with a "substitute teacher" with gradual integration into the general education environment. The addendum includes a section on "services considered and rejected." Five options were considered and each identifies a reason for rejection.
23. During the 2003-2004 school year, the School conducted an FBA on the Student over a period of days beginning in February 2004. The FBA "team" met on March 8 and 29, 2004, and continued to meet weekly through April. The proposed BIP was developed on April 7, 2004, and is linked to the FBA conducted in February and March. The BIP was incorporated into the April 15th proposed IEP, and the School continued to collect behavioral information on the Student subsequent to that time.
24. The School sent the Complainant a letter dated March 26, 2004, notifying her of the CCC meeting scheduled for April 2nd and another letter on April 2nd notifying her of the CCC to be convened on April 15th. The notification letter makes no reference to the Notice of Procedural Safeguards being included, and the School provided no documentation to demonstrate that it provided the Notice with the CCC notification or that the Complainant received the Notice.

25. The Complainant reports she verbally requested an educational evaluation and an FBA during the CCC meeting on September 10, 2003. However, the Complainant cannot document this request, and the CCC Summary/IEP on that date does not reflect that such request was made. The Complainant signed a permission form on February 10, 2004, for the Student to be administered an additional evaluation and an FBA. The additional evaluation was conducted on March 3 and 8, 2004. The FBA was conducted in February and March 2004. The CCC convened on April 2 and 15, 2004.
26. Although the School is required to implement a comprehensive system of personnel development (CSPD) that is integrated with other professional development plans and that provides for training and information dissemination to a variety of individuals, the School provided no documentation of its CSPD plan or the implementation of such plan.
27. In a letter dated April 26, 2004, the Complainant requested an independent educational evaluation (IEE) for autism spectrum disorder and an independent FBA. The Director of Special Education sent a letter in response on May 3, 2004; however, the letter does not provide information about where an IEE may be obtained or the criteria applicable to an IEE. The letter does not indicate that the requested IEE will be at public expense. The Complainant responded in a letter dated May 18, 2004, that the School either had to approve the request of an IEE at public expense or request a due process hearing. In a subsequent letter dated May 24, 2004, the Director approved the IEE and provided the Complainant with names of independent evaluators.

CONCLUSIONS:

1. Findings of Fact #3, #4, and #5 reflect that the annual goals included in the agreed-upon IEP from September 2003 and the proposed IEP from April 2004 are not measurable. Similarly, the short-term objectives are stated in terms such as "reasonable amount of time," "social appropriateness," and "high demand situations" that are subject to different interpretations, are ambiguous, and are not measurable. Therefore, a violation of 511 IAC 7-27-6(a)(2) is found.
2. Finding of Fact #2 establishes that, although the student's general and special education teachers received inservice training on autism spectrum disorder and other health impairments, others working with the Student did not receive the requisite inservice training. Therefore, violations of 511 IAC 7-26-12(c) and 511 IAC 7-26-2(c) are found.
- 3a. Because Finding of Fact #6 indicates that the IEP did not identify an alternative schedule for providing the parent with progress reports, the School was required to issue the progress reports at the same quarterly intervals as report cards. The School's failure to provide the progress reports for two quarters results in a violation of 511 IAC 7-27-7(a).
- 3b. Finding of Fact #7 demonstrates the Complainant provided consent for implementation of the Student's BIP in December 2003. However, despite the ongoing problems with the Student's behavior between December 2003 and April 2004 as described in Findings of Fact #12 and #13, the School provided no documentation of its implementation of or compliance with the BIP. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to implementation of the BIP.
- 3c. Finding of Fact #8 reflects that the Student's IEP stated he was to participate in a regular education classroom with daily supports and identified the types of supports and modifications to be provided. Assistance from a resource teacher was not identified as one of the supports. Therefore, no violation of 511 IAC 7-27-7(a) is found with respect to assistance from a resource teacher.

- 3d. Findings of Fact #3 and #4 establish that the Student's September 10th IEP included a single annual goal with four short-term objectives. Finding of Fact #18 indicates that there is no documentation to demonstrate the nature and type of assistance the School provided to assist the Student in achieving the short-term objectives between March 25, 2004, and the end of the school year. Therefore, a violation of 511 IAC 7-27-7(a) is found.
- 3e. Finding of Fact #9 indicates that the Student was to receive weekly direct and consultation services from an occupational therapist. However, the Student's IEP does not indicate that the occupational therapist was to develop a plan of calming activities for the Student. Therefore, no violation of 511 IAC 7-27-7(a) is found in this respect. However, Finding of Fact #19 reflects that, from March 25th to the end of the school year, the Student did not receive OT or social work services required by the September 10th IEP. As a result, a violation of 511 IAC 7-27-7(a) occurred with respect to the School's failure to provide the related services required by the IEP. Further, as indicated in Finding of Fact #9, although the September 10th IEP describes the length and frequency of occupational therapy to be provided, the IEP fails to identify how much of the weekly time is to be spent in direct therapy and how much in consultation. Further, the September 10th IEP lists social work as a related service, but does not specify the length or frequency of those services, and the IEP proposed in April 2004 fails to identify length and frequency of both occupational therapy and social work services. These deficiencies result in a violation of 511 IAC 7-27-6(a)(5).
- 3f. Findings of Fact #3 and #8 demonstrate that the Student's agreed-upon placement, as identified in the September 10th IEP, was the regular education classroom. Findings of Fact #14, #20, and #21 reflect that, subsequent to a seven-day in-school suspension, the School did not return the Student to the regular education classroom, but kept the Student in the isolated separate classroom in which the Student had served his in-school suspension. The Complainant did not consent to this change of placement. Although Finding of Fact #3 reflects the Complainant emailed the School stating she gave permission for placement in the general education classroom, this consent is ineffective because the placement identified by the Complainant in the e-mail is different from the IEP-proposed placement in a separate individual classroom, and because the Complainant affirmatively withheld her consent to the rest of the proposed IEP. Because annual goals and services to be provided to a student through an IEP are to be determined before placement in the least restrictive environment can be identified, the Complainant's refusal to consent to the goals and services in the proposed IEP negates her attempt to provide limited or qualified consent to the proposed placement. Therefore, because the Student was not placed in the general education classroom as described in the September 10th IEP, a violation of 511 IAC 7-27-7(a) is found with regard to the Student's placement from April 19 and the end of the school year.
4. Finding of Fact #10 reflects that the CCC considered the Student's need for extended school year services at the various CCC meetings convened during the 2003-2004 school year. Therefore, no violation of 511 IAC 7-27-4(c) or 511 IAC 7-27-6(a)(8) is found.
5. Finding of Fact #11 establishes that, at the various CCC meetings convened during the 2003-2004 school year, the CCC considered the Student's need for an assistive technology evaluation, as well as assistive technology devices or services. Therefore, no violation of 511 IAC 7-27-4(c)(6) is found.
6. Finding of Fact #7 indicates a lack of documentation to demonstrate that the BIP included in the September 10th IEP is linked to an FBA. However, Finding of Fact #23 reflects that the BIP proposed in April 2004 is based on an FBA that was initiated in February 2004. Therefore, a violation of 511 IAC 7-17-8 is found with respect to the BIP included with the September 10th IEP. However, no violation of 511 IAC 7-17-18 is found with respect to the BIP proposed in April 2004.

7. According to Finding of Fact #24, the School was unable to document that it had provided the Complainant with a Notice of Procedural Safeguards when sending the Notice of the CCC meetings in April 2004. Therefore, a violation of 511 IAC 7-22-1(d) is found.
8. Finding of Fact #25 reflects that, although the Complainant reports she verbally requested an additional evaluation and an FBA at the September 10, 2003, CCC meeting, neither she nor the School documented that such request was made. Upon obtaining the Complainant's consent for an additional evaluation and an FBA on February 10, 2004, the School conducted the evaluations and convened the CCC meeting within the requisite 60 instructional days. Therefore, no violation of 511 IAC 7-25-7 is found.
9. Although Finding of Fact #2 reflects that the School provided inservice training to various staff, the School did not provide documentation of the implementation of its comprehensive system of personnel development as required by 511 IAC 7-20-3; therefore, a violation is found.
10. 511 IAC 7-29-1(a) and (b) define suspension as the School's temporary unilateral removal of the student from the student's agreed-upon placement, unless the short-term removal is pursuant to the student's IEP. 511 IAC 7-29-1(c) counts a partial day of suspension as a day of suspension. Finding of Fact #12 reflects that the School sent the Student home from school on five days during the school year. Finding of Fact #7 establishes that sending the Student home was not part of the Student's IEP or BIP. Therefore, these five days count as days of suspension despite the fact that the School did not provide the Complainant with a formal notice of suspension. These five days are added to the four days identified in Finding of Fact #12 as days when the Student was formally suspended.
11. 511 IAC 7-29-1(g) excludes days of in-school suspension from being counted as days of suspension if certain criteria are met during the period of in-school suspension. The Student must be provided the opportunity to progress in the general curriculum, receive the special education services specified in the IEP, and participate with non-disabled students to the same extent as in the student's placement. Finding of Fact #13 indicates that the Student was originally assigned to in-school suspension for seven days beginning March 25, 2004. Finding of Fact #14 shows that, as a result of the CCC's recommendation on April 2nd, the Student remained in in-school suspension beyond the original seven days, culminating in more than ten consecutive instructional days. Findings of Fact #15, #16, #17, and #19 demonstrate that, during this time, the Student received instruction from various individuals identified as either paraprofessionals or substitute teachers, did not receive occupational therapy or social work services, and was not allowed to participate with non-disabled students to the extent permitted by the Student's September 10th IEP. Because the conditions of the in-school suspension do not comply with the requirements of 511 IAC 7-29-1(g), the fifteen days of in-school suspension from March 25 through April 16 count as days of suspension. As a result, Findings of Fact #12, #13, and #14 establish that the Student was suspended a total of twenty-four instructional days, including eighteen consecutive instructional days. Because of the number of consecutive and cumulative number of instructional days of suspension, the School was required to comply with various requirements of 511 IAC 7-29, including conducting a manifestation determination, conducting an FBA or reviewing an existing BIP, complying with the procedures for effecting a change of placement, and providing the student with educational services on the 11th cumulative day of suspension.
12. 511 IAC 7-29-1(d) permits the School to suspend a student for up to ten consecutive instructional days. When a student with a disability is suspended for more than ten consecutive instructional days, 511 IAC 7-29-2(a) defines the removal as an expulsion. As established in Conclusion #11, the Student's removal to in-school suspension is considered an expulsion because: (a) the days of in-school suspension count as days of suspension, and (b) when the days of suspension are viewed as a whole,

the number of consecutive instructional days is greater than ten. Therefore, a violation of 511 IAC 7-29-1(d) occurred in suspending the Student for more than ten consecutive instructional days.

13. 511 IAC 7-29-2 imposes certain procedural requirements upon the School, including compliance with change of placement procedures specified in 511 IAC 7-27-5. Change of placement procedures require a CCC meeting to be convened and, except in limited circumstances, parental consent for the change of placement. Findings of Fact #14 and #20 reflect that a CCC was convened. However, Conclusion #3f establishes that parental consent to a change of placement was not obtained. Changing the Student's placement without the parent's consent is available only when the Student's misconduct involves drugs or a weapon or when the CCC determines the student's behavior was not a manifestation of the Student's disability. Findings of Fact #13 and #14 indicate that neither of these factors was present. Therefore, a violation of 511 IAC 7-29-2 is found.
14. 511 IAC 7-29-5 requires the CCC to convene, within ten business days after suspending a student for more than ten cumulative instructional days, and develop a plan for conducting an FBA or review and revise an existing BIP. Findings of Fact #12 and #13 and Conclusions #10 and #11 establish that the tenth cumulative day of suspension occurred on March 26th. Ten business days from that date was April 9th. Finding of Fact #23 indicates that an FBA had been initiated prior to the suspension and that a revised BIP was drafted on April 7th between the April 2nd and April 15th CCC meetings, and that the CCC reviewed the BIP at the April 15th meeting. Therefore, no violation of 511 IAC 7-29-5 is found.
15. Conclusions #10 and #11 establish that the Student was suspended from school for more than ten consecutive instructional days. 511 IAC 7-29-2 defines suspension of more than ten consecutive instructional days as an expulsion and requires certain procedures be followed. 511 IAC 7-29-6 requires that, within ten instructional days of deciding to suspend the Student for additional days that would result in more than ten consecutive instructional days of suspension, the CCC must convene to conduct a manifestation determination. Finding of Fact #14 demonstrates that the School did not conduct a manifestation determination subsequent to the Student's suspension for ten consecutive instructional days. Therefore, a violation of 511 IAC 7-29-6 is found.
16. 511 IAC 7-29-1(f) requires the school to provide educational services to a student beginning on the eleventh cumulative day of suspension. The educational services must enable the student to progress appropriately in the general curriculum, as well as advance appropriately toward achieving the goals identified in the student's IEP. Findings of Fact #12 and #13 establish that the Student's eleventh cumulative day of suspension occurred on March 29th. Findings of Fact #15 and #18 reflect that, although the Student received services from paraprofessionals and certified substitute teachers, there is no indication that the services allowed the Student to progress appropriately in the general curriculum or advance toward achieving the goal identified in the IEP. Therefore, a violation of 511 IAC 7-29-1(f) is found.
17. Findings of Fact #13 through #17 and #21 demonstrate that, from March 25 through the end of the school year, an individual employed by the School as a substitute teacher provided most of the Student's instruction. Although the substitute teacher is a licensed teacher, her license is not in special or elementary education. 511 IAC 7-21-2 requires an individual to be appropriately licensed or certified for the position for which he or she is employed. Although the School refers to the individual working with the Student as a "substitute teacher," and the School certified the individual as a substitute, the individual is not substituting for anyone. It is apparent that the CCC felt the student required one-to-one assistance, that he be segregated in an individual classroom, and that the one-to-one assistant accompany the Student for any forays into the regular education classroom. In this situation, a one-to-one teacher for the student needed to be licensed to teach 2nd grade students or to teach special

education. The substitute teacher was not licensed for either of these. Therefore, a violation of 511 IAC 7-21-2(a) is found.

18. Finding of Fact #22 demonstrates that the CCC considered a range of placement options before recommending a placement in the least restrictive environment at the conclusion of the April 2004 CCC meetings. Therefore, no violation of 511 IAC 7-27-9 is found.
19. 511 IAC 7-21-2 permits schools to use appropriately trained paraprofessionals to work under the direction and supervision of licensed teachers to assist students in areas that relate to personal, social, and educational needs. Finding of Fact #15 indicates that the individuals providing services to the Student between March 25th and the end of the school year were certified substitute teachers. However, Finding of Fact #15 and Conclusion #16 reflect that only one of the individuals was actually licensed to teach second grade. Findings of Fact #16 and #17 reflect that the individual who worked with the Student from April 12th through the end of the school year was a certified substitute teacher, but her actual teaching license did not include elementary or special education instruction. A substitute teacher is a teacher when actually substituting for an absent teacher. There is no assertion that the Student's teacher was absent. Rather, the Student was removed from his regular classroom and placed in a segregated setting. The classroom teacher remained with the class, and the Student received services from a certified substitute teacher. Although certified to serve as a substitute for an absent teacher, the teacher was not absent. As a consequence, the substitute teacher was acting more as an instructional aide and could provide services only under the direct supervision of the Student's teacher. Because the substitute teacher was not otherwise licensed to teach the Student and was not substituting for an absent teacher, the substitute does not constitute the "teacher of service" pursuant to 511 IAC 7-17-73. As an instructional aide, direct supervision, also called "line of sight" supervision was required. Therefore, a violation of 411 IAC 7-21-2 has occurred.
20. Finding of Fact #27 establishes that the School failed to respond to the Complainant's request for an independent educational evaluation in one of the two manners allowed and within ten business days of receipt of the Complainant's request. Therefore, violations of 511 IAC 7-25-5(a) and (c) are found.
21. 511 IAC 7-27-5(a)(5) and (6) require the CCC to identify the reasons for a placement determination, a description of any options considered and rejected, and any other factors relevant to a proposed or rejected placement. Finding of Fact #22 demonstrates that, in developing the final April 2004 IEP, the CCC recommended a placement in the least restrictive environment, identified the reasons for the placement, and described other placement options considered and rejected. The CCC Report/IEP also addresses other factors relative to the CCC's placement recommendation. Therefore, no violation of 511 IAC 7-27-5(a)(5) or (6) is found.
22. Per Findings of Fact #1 and #7, the September 10th IEP identified the Student's placement in a general education classroom with his chronological age peers. Findings of Fact #13, #14, #20 and #21 indicate that the Student was removed from the general education classroom placement, initially as part of an in-school suspension, and placed in a separate classroom where he was the only student. The School maintained the Student in the segregated placement without parental consent after the period of suspension had expired. Although the Student was in the same building during this time as his chronological age peers, he was isolated from them in a separate classroom. Because placement in a separate classroom was not the result of an agreement of the CCC, a violation of 511 IAC 7-27-9(a)(11) is found.
23. 511 IAC 7-27-9(a)(12) addresses least restrictive environment and the delivery of services and requires the School to ensure that a student with a disability is not precluded from receiving educational services in an age-appropriate general education classroom solely because the student needs modifications to

participate in the general education classroom. Findings of Fact #8 and #13 indicate that the Student's agreed-upon placement was the general education classroom with special education support and modifications and that the Student was initially removed from the general education classroom and assigned to in-school suspension for behavior in violation of school rules. There is no documentation that the Student's removal was due to the Student's need for modifications in the general education classroom. In addition, Finding of Fact #2 reflects that both the Student's general and special education teachers had received inservice training in the Student's identified exceptionality areas. Therefore, no violation of 511 IAC 7-27-9(a)(12) is found.

The Department of Education, Division of Exceptional Learners, requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Monroe County Community School Corporation shall:

1. Convene a case conference committee meeting **no later than August 13, 2004**. The CCC shall:
 - a. Determine the nature and amount of compensatory special education and related services to be provided to the Student to make up for the lack of appropriate services from March 25, 2004 through the end of the 2003-2004 school year. While the CCC has discretion to determine the nature and amount of services, it does not have the discretion to determine that no compensatory services are needed. The CCC Report shall detail the CCC's consideration of the compensatory special education and related services, and the Student's IEP shall clearly delineate the compensatory services from the other services to be provided during the 2004-2005 school year, including:
 - i. the nature of compensatory services,
 - ii. the amount (length and frequency) of compensatory services,
 - iii. the location of services,
 - iv. the personnel responsible for providing the services, and
 - v. a description of how the parent will be notified that the compensatory services are being provided in accordance with the IEP.
 - b. Review, and if necessary, revise the Student's IEP for the 2004-2005 school year to ensure that it is compliant with the requirements of 511 IAC 7-27-6(a)(1) through (12), with specific attention to and inclusion of:
 - i. Measurable annual goals, including benchmarks or short-term objectives,
 - ii. A behavioral intervention plan (if the CCC determines such plan is appropriate) that is clearly linked to a functional behavioral assessment,
 - iii. A clear statement of how the Student's progress on annual goals, including progress on benchmarks or short-term objectives, will be measured, what format will be used for reporting such progress, and the frequency with which the teacher of record will provide the progress reports to the parent,
 - iv. Clearly identified related services, including the nature and type of related service, the frequency of each related service, the length of each related service "session," the location of the related service, and the personnel responsible for delivering the related service,
 - v. Identification of any supports to be provided to personnel working with the Student, and
 - vi. Identification of placement in the least restrictive environment.

The School shall submit a copy of the CCC Report and agreed-upon IEP (signed by the Complainant) **no later than August 27**. If, by August 27, 2004, the School is unable to reach agreement with the Complainant on the appropriate services and placement for the Student, the

School shall immediately initiate due process to resolve the disagreement. The School may use mediation, if the Complainant agrees to participate, as the first step in resolving the disagreement. However, if mediation is not successful or if the Complainant declines to participate in mediation, the School shall initiate a due process hearing.

2. Conduct in-service training for appropriate special and general education personnel **no later than September 16, 2004**, on the following issues:
 - a. Suspending a student with a disability, specifically:
 - i. Sending a student home from school is considered a day of suspension unless the student's IEP or BIP includes being sent home as a measure to address behavior;
 - ii. A single period of suspension for violation of school rules is limited to ten consecutive instructional days;
 - iii. The CCC must be convened within 10 business days of suspending a student with a disability for the eleventh cumulative instructional day in a school year, and the CCC must develop a plan for a functional behavioral assessment or must review/revise an existing behavioral intervention plan,
 - iv. Services must be provided to the student beginning on the eleventh cumulative instructional day of suspension, and those services must enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the IEP goals, and
 - v. Days of "in-school suspension" will count as days of suspension unless the student has the opportunity to progress appropriately in the general curriculum, receive the special education and related services identified in the student's IEP, and participate with non-disabled students to the extent contemplated by the student's IEP.
 - b. Expelling a student with a disability, specifically:
 - i. Suspending a student with a disability for more than ten consecutive instructional days constitutes an expulsion,
 - ii. An expulsion constitutes a change of placement and requires the school to comply with the requirements of 511 IAC 7-27-5,
 - iii. The CCC must be convened within 10 instructional days of the date the school decides to suspend (expel) the student for more than ten consecutive instructional days and determine if the behavior for which the student is being suspended (expelled) is related to the student's disability or placement, and
 - iv. If the CCC determines the behavior is a manifestation of the student's disability or placement, the student may not be expelled.
 - c. Developing a complete and appropriate IEP, specifically:
 - i. Writing measurable goals, including benchmarks and short-term objectives,
 - ii. Identifying how a student's progress will be reported (format to be used) and how frequently the parent will be provided with progress reports, and
 - iii. Identifying the type of related service (OT, PT, etc.), the nature of the related service (direct, individual, consultation, group, etc.), and the length, frequency, location, and personnel responsible,
 - d. Developing behavioral intervention plans, including the requirement that a behavioral intervention plan be linked to information gathered through a functional behavioral assessment.
 - e. Documenting implementation of the services identified in a student's IEP.
 - f. Obtaining parental consent prior to changing the student's current agreed-upon (IEP-identified) placement.

The School shall submit a copy of the inservice agenda, handouts or other materials provided to the inservice participants, names and titles of the presenters, and a list of participants with signatures confirming attendance, identified by name and title, **no later than September 23, 2004**.

3. Submit a copy of the School's comprehensive system of personnel development plan to be implemented for the 2004-2005 school year **no later than September 23, 2004**. The CSPD information must identify the inservice training priorities, how those training needs will be met, the intended audience for each inservice, and how the CSPD is integrated with other professional development plans.
4. If the Student's eligibility continues to be based on other health impairment or autism spectrum disorder, provide specialized inservice training to all professionals and paraprofessionals identified to work with the Student during the upcoming school year. The inservice training shall be completed no later than September 23, 2004, and the School shall submit a copy of the inservice training agenda, all materials provided to the participants, and a list of participants with signatures confirming attendance and identified by name and title **no later than September 30, 2004**.
5. Revise its CCC meeting notification form to indicate that a Notice of Procedural Safeguards is enclosed with the CCC notice and provide the Division with an assurance statement that the School will ensure that a Notice of Procedural Safeguards is provided to parents with each notification of a CCC meeting. A copy of the revised CCC meeting notification document and the assurance statement shall be provided to the Division **no later than September 30, 2004**.
6. Provide an assurance statement that the School will use appropriately licensed teachers and that paraprofessionals and other non-licensed personnel working with students with disabilities will be under the direction and direct supervision of an appropriately licensed teacher. The School shall submit the assurance statement **no later than September 30, 2004**.
7. Provide an assurance statement that the School, upon receipt of a parent's request for an independent educational evaluation, will provide the parent with information about where an independent educational evaluation may be obtained and the School's criteria applicable to an independent educational evaluation and that, within ten business days of receipt of the request, the School will provide the parent with written notification that the independent educational evaluation will be at the School's expense or will initiate a due process hearing. The School shall submit the assurance statement **no later than September 30, 2004**.